

701—7.9(17A) Appeals. Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, shall file an appeal, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The appeal must be filed as described in rule 701—7.3(17A).

7.9(1) Deadlines. The period for appealing department action relating to refund claims is the same statutory period as that for contesting an assessment. Failure to timely file a proper appeal will be construed as a waiver of opposition to the matter involved unless, on the director's own motion, pursuant to statutory authority, the powers of abatement or settlement are exercised. The review unit may seek dismissal of appeals which are not in the proper form as provided by this rule. See subrule 7.12(2) for dismissals.

7.9(2) Appealing refund claims that have not been reviewed within six months. If the department has not granted or denied a filed refund claim within six months of the filing of the claim, the refund claimant may file an appeal. Even though an appeal is so filed, the department is entitled to examine and inspect the refund claimant's records to verify the refund claim.

7.9(3) Paying assessment in order to appeal refund claim denial. Notwithstanding the above, the taxpayer who fails to timely appeal an assessment may contest the assessment by paying the whole assessed tax, interest, and penalty, and filing a refund claim within the time period provided by law for filing such claim. However, in the event that such assessment involves divisible taxes which are not timely appealed, namely, an assessment which is divisible into a tax on each transaction or event, the taxpayer may contest the assessment by paying a portion of the assessment and filing a refund claim within the time period provided by law. In this latter instance, the portion paid must represent any undisputed portion of the assessment and must also represent the liability on a transaction or event for which, if the taxpayer is successful in contesting the portion paid, the unpaid portion of the assessment would be canceled. *Flora v. United States*, 362 U.S. 145, 4 L.Ed. 2d 623, 80 S.Ct. 630 (1960); *Higginbotham v. United States*, 556 F.2d 1173 (4th Cir. 1977); *Steele v. United States*, 280 F.2d 89 (8th Cir. 1960); *Stern v. United States*, 563 F. Supp. 484 (D. Nev. 1983); *Drake v. United States*, 355 F. Supp. 710 (E.D. Mo. 1973). Any such appeal filed is limited to the issues covered by the amounts paid for which a refund was requested and denied by the department. Thereafter, if the department does not grant or deny the refund within six months of the filing of the refund claim or if the department denies the refund, the taxpayer may file an appeal as authorized by this rule.

7.9(4) Divisible taxes. All of the taxes administered and collected by the department can be divisible taxes, except individual income tax, fiduciary income tax, corporation income tax, franchise tax, and statewide property tax. The following noninclusive examples illustrate the application of the divisible tax concept.

EXAMPLE A: As a responsible party, X is assessed withholding income taxes, penalty, and interest on eight employees. X fails to timely appeal the assessment. X contends that X is not a responsible party. If X is a responsible party, X is required to make monthly deposits of the withholding taxes. In this situation, the withholding taxes are divisible. Therefore, X may pay an amount of tax, penalty, and interest attributable to one employee for one month and file a refund claim within the time period provided by law since, if X is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

EXAMPLE B: Y is assessed sales tax, interest, and penalty for electricity purchased and used to power a piece of machinery in Y's manufacturing plant. Y fails to timely appeal the assessment. Y was billed monthly for electricity by the power company to which Y had given an exemption certificate. Y contends that the particular piece of machinery is used directly in processing tangible personal property for sale and that, therefore, all of the electricity is exempt from sales tax. In this situation, the sales tax is divisible. Therefore, Y may pay an amount of tax, penalty, and interest attributable to one month's electrical usage in that machinery and file a refund claim within the time period provided by law since, if Y is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

7.9(5) Who may be named in an appeal. The appeal shall be brought in the name of the aggrieved taxpayer. The appeal may be filed by and in the name of the aggrieved taxpayer or by and in the name

of the authorized representative described in Iowa Code section 421.59(2), Iowa Code chapter 633B, or subrule 7.6(6) legally entitled to institute a proceeding on behalf of the person, or by an intervenor in contested case proceedings. In the event of a discrepancy between the name set forth in the appeal and the correct name, a statement of the reason for the discrepancy shall be set forth in the appeal.

7.9(6) Form and content of the appeal.

a. Department forms. Appeals may be filed using the form available on GovConnectIowa or the form available on the department's website, tax.iowa.gov/forms.

b. Manually created appeals. Persons who do not use GovConnectIowa or the form available on the department's website shall use the following format:

- (1) The appeal shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	
(state taxpayer's name and address and	*	APPEAL
designate type of proceeding, e.g.,	*	Docket No. _____
income tax refund claim)	*	(filled in by Department)

- (2) The appeal shall substantially state in separate numbered paragraphs the following:
1. Proper allegations showing:
 - Date of department action, such as the notice of assessment, refund denial, etc.;
 - Whether the taxpayer failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;
 - Whether the appeal involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;
 - Copies of the documented department action, such as the notice of assessment, refund claim, and refund denial letter;
 - Other items that the taxpayer wishes to bring to the attention of the department; and
 - A request for attorney fees, if applicable.
 2. The type of tax, the taxable period or periods involved, and the amount in controversy.
 3. Each error alleged to have been committed, listed in a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.
 4. Reference to any particular statute or statutes and any rule or rules involved, if known.
 5. Description of records or documents that were not available or were not presented to department personnel prior to the filing of the appeal, if any. Copies of any records or documents that were not previously presented to the department shall be provided.
 6. Any other matters deemed relevant and not covered in the above paragraphs.
 7. The desire of the taxpayer to expedite proceedings. See rule 701—7.13(17A,421) for more details on expedited proceedings.
 8. A statement setting forth the relief sought by the taxpayer.
 9. The signature of the taxpayer or that of the taxpayer's representative. If it is signed by the taxpayer, include the address and telephone number of the taxpayer in the signature block. If it is signed by a taxpayer representative, include the address and telephone number of the taxpayer representative in the signature block. Appeals submitted by a taxpayer's representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—7.6(17A), on file with the department, or one should be included with the appeal.

7.9(7) Amendments. The taxpayer may amend the appeal at any time before a responsive pleading is filed. Amendments to the appeal after a responsive pleading has been filed may be allowed with

the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance. The department may request that the taxpayer amend the appeal for purposes of clarification.

7.9(8) *Denial of renewal of vehicle registration or denial of issuance or renewal, or suspension, of a driver's license.*

a. A person who has had an application for renewal of vehicle registration denied, has been denied the issuance of a driver's license or the renewal of a driver's license, or has had a driver's license suspended may file an appeal with the clerk if the denial of the issuance or renewal or the suspension is because the person owes delinquent taxes.

b. The issues raised in an appeal by the person, which are limited to a mistake of fact, may include but are not limited to:

- (1) The person has the same name as the obligor but is not the correct obligor;
- (2) The amount in question has been paid; or
- (3) The person has made arrangements with the department to pay the amount.

This rule is intended to implement Iowa Code chapter 17A.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 1303C**, IAB 2/5/14, effective 3/12/14; **ARC 2657C**, IAB 8/3/16, effective 9/7/16; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]